

bars Suzanne Sadlowski's Section 1983 claim against Sgt. Benoit based on the alleged illegal search of the Sadlowski residence.

Collateral estoppel bars persons party to a litigation or those in privity with them from relitigating in a subsequent litigation issues decided in the prior litigation. Privity exists where the party to a litigation either substantially controlled or was virtually represented in the prior litigation. Gonzalez v. Banco Central Corp., 27 F.3d 751 (1st Cir. 1994). Determining whether a party was "virtually represented" in a prior litigation such that privity can be said to exist requires a balancing of the equities in which the court should consider, among other factors: whether there was an identity of interests between the non-party and the party to the prior litigation; the non-party's actual or constructive notice of the prior litigation; the adequacy of the representation afforded the party to the prior litigation; and the relationship between the non-party/party. Id., at 761-762.

Mr. and Mrs. Sadlowski filed the application for criminal process against Sgt. Benoit in the Leominster District Court on February 14, 1997. See Defs. Mem., at Ex. C-1. At that time, Suzanne Sadlowski was sixteen years old, that is, she was a minor. The Sadlowskis' application for a criminal complaint alleged that Sgt. Benoit conducted an illegal search of their residence, where Suzanne Sadlowski, their daughter, also resided. Suzanne Sadlowski's interests with regard to the legality of the search conducted by Sgt. Benoit are identical to those of her parents and it is

in an unsworn memorandum will not be considered by this Court. Nonetheless, because I find that Justice Kilmartin must have considered and rejected the Plaintiffs' arguments concerning the validity of the warrant in denying Mr. and Mrs. Sadlowski's application for the issuance of a criminal application against Sgt. Benoit, for purposes of this Report and Recommendation, it is not necessary for me to consider whether Justice Kilmartin ruled on the motion to invalidate the search warrant.

inconceivable that Suzanne Sadlowski was not aware that her parents were pursuing an application for a criminal complaint against Sgt. Benoit. Obviously, the relationship of parents and child is a close one. This is particularly true in the case of a minor child as reflected by the fact that the parents generally represent the interests of such child in court proceedings. As I have previously stated, Mr. and Mrs. Sadlowski were permitted to appeal the Clerk Magistrate's denial of their application for criminal complaint against Sgt. Benoit and were given a full hearing by Justice Kilmartin. Mr. and Mrs. Sadlowski represented themselves in connection with their application for a criminal complaint against Sgt. Benoit. While Mr. and Mrs. Sadlowski are not lawyers, they have exhibited an extensive knowledge of court rules and procedures. I am confident that they adequately represented themselves in the District Court proceedings. Under these circumstances, after balancing the equities, I find that Mr. and Mrs. Sadlowski were in privity with Suzanne Sadlowski. Therefore, principles of collateral estoppel bar Suzanne Sadlowski's Section 1983 illegal search claim against Sgt. Benoit.

Since I have determined that the Plaintiffs' Section 1983 claim against Sgt. Benoit for an alleged illegal search of their residence is barred by principles of collateral estoppel, it is not necessary for me to address Sgt. Benoit's argument that he is entitled to summary judgment on the grounds that the Plaintiffs' have failed to establish a genuine issue of material fact with respect to this claim.

Suzanne Sadlowski's Section 1983 Claim For Failure To Mirandize; False Arrest; and Intimidation

Suzanne Sadlowski has alleged a Section 1983 claim against Benoit for violation of her Fifth Amendment rights as a result of his failure to mirandize her when he arrested her subsequent to the search of the Sadlowski residence. However, a Miranda violation, in and of itself, does not give

rise to a constitutional claim under Section 1983. Veilleux v. Pershau, 101 F.3d 1, 2 (1st Cir. 1996). This is because Miranda warnings are deemed to be a procedural safeguard rather than a right explicitly guaranteed by the Fifth Amendment. Neighbour v. Covert, 68 F.3d 1508, 1510 (2d Cir. 1995); see Miranda v. Arizona, 384 U.S. 436, 467 (1966). The sole remedy for a Miranda violation is the exclusion from evidence of any self-incriminating statements made by the accused. An accused who has not been advised of his Miranda rights cannot bring a suit for damages under Section 1983. Neighbour, 68 F.3d at 1510-11; Lucero v. Gunter, 17 F.3d 1347, 1350-1 (10th Cir. 1994).

Suzanne alleges that since the search of the Sadlowski residence was illegal, her arrest was tainted thereby and illegal. Since I have found that Suzanne Sadlowski is collaterally barred from challenging the legality of the search, her false arrest claim necessarily fails. Furthermore, Ms. Sadlowski's false arrest claim fails independently of the validity of the search. The charges against Ms. Sadlowski were continued without a finding pursuant to Mass.Gen.L.ch. 276, §87, which provides for pre-trial diversion of juvenile cases. Prior to entering a plea, the individual is placed on probation for a period of time. Id. While such disposition may not technically constitute a conviction, under the Supreme Court's ruling in Heck v. Humphery, 512 U.S. 477, 489 (1994) which bars Section 1983 claims for false arrest unless the criminal proceedings *were terminated in the plaintiff's favor*, it prevents Ms. Sadlowski from bringing a subsequent Section 1983 claim for false arrest. See Nuno v. County of San Bernardino, 58 F.Supp.2d 1127, 1135-7 (C.D. Cal. 1999) (defendant pled nolo contendere to obstruction of a peace officer was barred by Heck from raising a Section 1983 claim against officer for use of excessive force).

Ms. Sadlowski asserts that Sgt. Benoit violated her rights under Mass.Gen.L. Ch. 12, §11H by threatening to tear her room apart during the search.⁶ To the extent that

Suzanne Sadlowski is asserting a Section 1983 claim against Sgt. Benoit for threatening to tear up her room and dumping her cosmetic bag in front of her, in order to establish that Sgt. Benoit's actions violated her constitutional rights. Ms. Sadlowski must establish that Sgt. Benoit conducted the search in an objectively unreasonable manner. See Aponte Matos v. Toledo Davila, 135 F.3d 182, 191 (1st Cir. 1998); Martin v. Rodriguez, 154 F.Supp.2d 306, 314 (D.Conn. 2001). Quite frankly, while Ms. Sadlowski may have been offended by Sgt. Benoit's manner, her allegations do not come close to establishing the type of conduct necessary to establish a constitutional violation, i.e., that Sgt. Benoit acted unreasonably.

For the reasons set forth above, I recommend that summary judgment enter for Sgt. Benoit on the Plaintiffs' Section 1983 claims.

Plaintiffs' State Law Claims

Sgt. Benoit argues that he is entitled to summary judgment as a matter of law on substantially all of the state law claims asserted by the Plaintiffs. Plaintiffs originally filed this action in state court. The action was removed to this Court by Sgt. Benoit on the grounds that this Court had jurisdiction over Plaintiffs' Section 1983 claims. I have recommended that summary judgment enter for Sgt. Benoit on Plaintiffs' Section 1983 claims. I further recommend that this Court refuse to exercise pendent jurisdiction over Plaintiffs' remaining state law claims and therefore, that this

⁶The Massachusetts Civil Rights Act, Mass.Gen.L. Ch. 12, §11H prohibits an individual from interfering with the rights of another by means of threats, intimidation or coercion. Section 1983 does not require that the violation of a person's rights have occurred by means of threats, intimidation or coercion.

action be remanded to state court for further proceedings.

Conclusion

I recommend that:

1. Defendant, Benoit's Motion For Summary Judgment Pursuant To F.R.Civ.P. 56(C) (Docket No. 122) be allowed as to Plaintiffs' federal claims and that Plaintiffs' state law claims be remanded to state court.

Notice to the Parties

The parties are advised that under the provisions of Rule 3(b) of the Rules for the United States Magistrates in the United States District Court for the District of Massachusetts, any party who objects to these proposed findings and recommendations must file a written objection thereto with the Clerk of this Court WITHIN 10 DAYS of the party's receipt of this Report and Recommendation. The written objections must specifically identify the portion of the proposed findings, recommendations, or report to which objection is made and the basis of such objection. The parties are further advised that the United States Court of Appeals for this Circuit has indicated that failure to comply with this rule shall preclude further appellate review by the Court of Appeals of the District Court's order entered pursuant to this Report and Recommendation. See United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986); Scott v. Schweiker, 702 F.2d 13,14 (1st Cir. 1983); United States v. Vega, 678 F.2d 376, 378-379 (1st Cir. 1982); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980). See also, Thomas v. Arn, 474 U. S. 140, 106 S. Ct. 466.

"s/Charles B. Swartwood III"

**CHARLES B. SWARTWOOD, III
MAGISTRATE JUDGE**

APPENDIX G

**ORDER BY DISTRICT COURT JUDGE NATHANIEL
GORTON ADOPTING REPORT AND
RECOMMENDATION**

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Sadlowski,

Plaintiff(s)

V.

Benoit, et al.,

Defendant(s),

CIVIL ACTION
NO. 98-40194-NMG

GORTON, D. J.

ORDER FOR REMAND

In accordance with the Court accepting and adopting the Report and Recommendation of Magistrate Judge Swartwood dated 3/1/02, allowing the defendant's motion for summary judgment as to the plaintiff's federal claims and that plaintiff's state law claims be remanded to state court it is hereby ORDERED that the above-entitled action be and hereby is REMANDED to Worcester Superior Court for further proceedings.

By the Court

DATED: March 4, 2002

"s/M.S. Castles"

Deputy Clerk

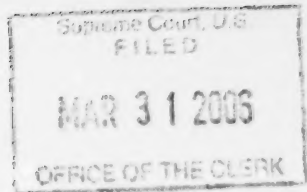
APPENDIX H

EXCERPT FROM MASSACHUSETTS SUPREME
JUDICIAL COURT IN CASE OF *MANNING V*
MUNICIPAL COURT OF ROXBURY DISTRICT, 372
MASS 315, 317 (1977)

EXCERPT: "The plaintiff has not been denied his right to bring a civil action against . . ."

(Magistrate Judge Charles Swartwood III made reference to *Manning v Municipal Court of Roxbury District* case in the summary judgment in his ruling against the Sadlowskis. He disregarded that portion of the Massachusetts SJC ruling that was favorable to the Sadlowskis and which revealed that collateral estoppel did not apply to Sadlowskis' case.)

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No. _____

05 - 831

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL T. SADLOWSKI, JOCELYN M. SADLOWSKI
- PETITIONERS

vs.

LOUIS BENOIT - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT

PETITION FOR REHEARING OF
PETITION FOR WRIT OF CERTIORARI, 05-831

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Petitioners Michael Sadlowski and Jocelyn Sadlowski petition the justices of the United States Supreme Court to rehear our Petition for Writ of Certiorari, 05-831.

It is Sadlowskis contention that probable cause justifying the specific search must be established prior to a search warrant issuing and no legal search can be performed until a search warrant has been issued by the court and such issued search warrant shown to the persons at the residence being searched during the time of the search.

For a police detective to use a manufactured search warrant that was radically different than the one that appeared on file at some unknown point in time, and where such manufactured search warrant was broad based, bearing no authorizations, never seen by the court, never issued by the court and never returned to the court is a gross violation of the law and of the Fourth Amendment rights of the Sadlowskis.

The "real" proof that a search warrant has issued is that the issued search warrant is shown to the person or persons at the residence during the time of the search of the residence.

The Sadlowskis were of the opinion that they presented enough detail to gain a ruling in their favor. Evidently, the court wants a greater depth of details.

The search warrant on file at the Leominster District Court is on the official state form of Massachusetts. The official search warrant form is of a heavier weight bond paper, around 30-40 lb. weight, with brown typeface.

In Massachusetts, a search warrant must be served in hand and bearing authorization. Otherwise, the search is unreasonable. This was established by the Massachusetts Supreme Judicial Court in the case of *Commonwealth v Guaba*, 417 Mass (1994).

Grounds will be presented herein that summarize previous information and reveal additional grounds.

Jocelyn Sadlowski in her affidavit and deposition described key points that reveal that the search warrant on file was not the one served at our 85 Harvard Street residence and nor was it a copy. The one given to Jocelyn Sadlowski at the residence was substantially different in many ways and had no authorizations. See affidavit of Jocelyn Sadlowski in Petition for Writ of Certiorari, 05-831.

Suzanne Sadlowski in her deposition revealed that the search warrant given to her for examination at the residence by Detective Louis Benoit was substantially different than the one on file. As she was a high school student who had typing class, she had a keen awareness of paper. She noticed that the paper of the search warrant given to her at the residence was flimsy, like typing paper. The weight of typing paper used in schools in 1996 was 16 lb. weight or lighter.

On the matter of who else saw what was shown at the residence, from the transcript of deposition of Louis Benoit, of April 6, 2000, page 38-39:

Q. Did any of the search team members see the search warrant while at 85 Harvard Street residence, the search warrant that you served there?

A. I don't know what they saw. I was busy doing a job at that time and I expect they were busy doing a job making sure the house was secure while I was doing my job with the search warrant.

During the deposition of Detective Benoit, he revealed in an exhibit how he folded the search warrant that he stated he carried to the residence. This exhibit was marked by the stenographer as Exhibit No. 1. Michael Sadlowski offered Exhibit No. 1 to the court but Magistrate Judge Swartwood III refused it.

Michael Sadlowski hired a private investigator to go to the Leominster District Court and view the search warrant on file and mark up a copy to show where the folds are in it. The folds in the exhibit created by Detective Benoit are different than the folds in the search warrant on file.

The above facts reveal that the search warrant document shown at the residence was not the one on file at Leominster District Court. Evidently, these facts were not enough to convince the justices. So let us proceed to some additional grounds.

Detective Louis Benoit claimed in his deposition that he served the original search warrant on file at the Sadlowski residence. The search warrant on file was applied for by Detective Joseph Siciliano, Jr. and Detective Siciliano created the affidavit for it. Detective Benoit led the search team.

During the case at the U.S. District Court, the Sadlowskis had filed an Emergency Motion for Clarification of Confusion Created at Hearing on Defendant Benoit's Motion for Summary Judgment, #146 of the record. The motion was denied and so the Sadlowskis were denied access to information important to the case. One of the matters was that attorney Stephen Pfaff, counsel for Louis Benoit, had made a statement at the oral hearing that Louis Benoit showed a search warrant document different than the one on file at Leominster District Court. Sadlowskis wanted to get clarification on what Benoit showed but the Sadlowskis were denied an opportunity as the Emergency Motion was denied. The transcript of the oral hearing on the Motion for Summary Judgment will reveal that attorney Pfaff made the statement.

Detective Siciliano Jr. in a drug case at trial testified that he found drugs on defendant Almonte.. The attorney for the defendant stated to the jury that Detective Siciliano "planted"

the evidence. The defendant was acquitted. This case was written up in the Sentinel & Enterprise newspaper, dated August 14, 2004. See article, shown on pages 7-9.

The U.S. Court of Appeals for the First Circuit twisted information around to serve its purpose to dismiss the Sadlowski appeal.

In Sadlowskis amended opposition, the Sadlowskis were addressing information that was in defendant Benoit's Memorandum of Law in Support of Motion for Summary Judgment.

The following section is from Sadlowskis amended opposition, (#141 of record)

"In the last paragraph, defendant Benoit makes a statement that the plaintiffs mention that the affidavit being made up or invalid. This is incorrect. The plaintiffs pleadings make reference to the document labeled as search warrant shown at the Sadlowski residence was made-up, unauthorized."

The following section is from the U.S. Court of Appeals for the First Circuit Opinion, 02-1365:

"In their opposition to summary judgment, plaintiffs specifically denied that they were alleging that the affidavit submitted in support of the warrant application was "made-up or invalid.""

The information from Sadlowskis' opposition was twisted around by the court. There are major issues with the affidavit for application for search warrant. The Sadlowskis had not addressed the affidavit in their pleadings as they did not believe that it needed to be addressed. The focus was on the illegal, manufactured search warrant of different form and content, unauthorized and never seen, never issued and never returned to the court that was used by detective Benoit. Sadlowskis have alleged in their case that the affidavit was

completed after the search was performed. The police came to the Sadlowski residence with a phony search warrant to see what they could find. There was no probable cause for the police to have searched the Sadlowski residence by rummaging through Sadlowskis' personal effects, papers, kitchen, living room, bedrooms and cellar. If the search warrant had issued, it would have been shown at the residence. The search warrant on file, 9661SW-29 that is on file at the Leominster District Court was not shown at the Sadlowski residence.

During discovery, key discovery requests were denied.

The affidavit for application for search warrant was created on a computer system. Therefore, the computer file would have date information of the last revision of the computer file. Sadlowskis filed a Motion to Have Software Consultant access the police system to locate the computer files of the affidavit for application for search warrant and print out the file and mark the following information on the printout - date of last revision (independent software consultant never allowed by the court).

Lieutenant Michele Pellechia of the Leominster Police Department stated in his deposition of March 15, 2000, that the computer files were saved on the computer system. The computer files of particular interest were the Year end 1996 files. Lieutenant Pellechia was the administrative officer who had responsibility for management of the computer system operations.

From transcript of deposition of Lieutenant Pellechia, page 19:

Q. So what would happen after you created the yearly tape for 1996?

A. Uh-huh.

Q. What would happen? Would that get - -

A. That would be archived.

Q. That would be archived?

A. That's correct.

Q. Where would it be archived?

A. We have a vault.

Q. In the Leominster Police Department?

A. Yes.

Then, at the evidentiary hearing, it was identified that the particular files of the affidavit were not saved. It was identified that only two years of data was kept and 1996 year end files were no longer there. Sadlowski pointed out the statement of the deposition by Lieutenant Pellechia. Magistrate Judge Swartwood III just said it was a mistake by Lieutenant Pellechia.

In the deposition of Lieutenant Pellechia, it was learned that the police department had the tools available to manufacture a search warrant. The detectives had a personal computer with word processing software, a scanner and color printer. Manufacturing a search warrant with the words "Search Warrant" in large orange letters and the rest in black lettering would be quite easy. Color printing with computer systems in 1996 used special paper which was lightweight, like typing paper.

The roadblocks put up by the police to avoid getting access to the computer file of the affidavit for search warrant to see the date and time it was completed infers that the police were hiding this information because it would support Sadlowskis' allegations that the affidavit was completed after the search was performed.

Detective Siciliano could have easily finalized the affidavit for search warrant after returning to the police station from the search and then meeting with Assistant Clerk Magistrate Raymond Salmon Jr. prior to the close of the office on Friday, August 23, 1996. It is known from another

document, that Assistant Clerk Magistrate Raymond Salmon Jr. signed a document at 6:00 P.M. on August 23, 1996.

During discovery, the Sadlowskis filed a Motion to have Fingerprint Analysis Performed on Search Warrant on file at Leominster District Court; the motion was denied. Sadlowskis filed a Motion to Compel Detective Benoit to take a lie detector test; the motion was denied.

In another instance that shows prejudice against the Sadlowskis, the Opinion of the case at the U.S. Court of Appeals for the First Circuit has been removed from the Opinions in the database at the U.S. Court of Appeals for the First Circuit. Michael Sadlowski accessed the web site for the First Circuit and did a lookup in the database of opinions on March 21, 2006 and the Opinion 02-1365.01A could not be found. Yet, due to internet search firms who retrieve copies and store them, a lookup of Michael Sadlowski shows the Opinion 02-1365.01A. It is improper for the Court of Appeals to remove the opinion in Sadlowskis case. There are other opinions in the database that are shown as not for publication in West's Reporter that are in the database at the First Circuit.

Article from Sentinel & Enterprise newspaper

April 14, 2004

Man acquitted after lawyer suggests that police planted drugs

By Matt O'Brien

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FITCHBURG: A jury acquitted a Fitchburg man on drug charges Tuesday after the man's lawyer accused police of planting the drugs on him.

Police arrested Luis Almonte, 31, outside the Searstown Mall in Leominster in August and charged him with possession of cocaine and heroin.

A group of plainclothes police detectives from the North Worcester County Drug Task Force exited a van and arrested Almonte after they say he tried to evade them.

"Why is it that the only person who says Mr. Almonte had any drugs on him was (Leominster police) Det. (Joseph) Siciliano?," asked Fitchburg attorney John A. Bosk as he addressed a six-person jury in closing arguments. "Ask yourself, why is it nobody else saw it, except for that one person?"

Police say they found a small amount of heroin in Almonte's pocket and cocaine a few feet away. Police believe he swallowed the rest of the drugs after spotting police, said Assistant District Attorney Matthew Mullaney.

The drugs seized from Almonte's pocket and the ground were later sent to a crime lab for analysis and tested positive.

Bosk speculated that Siciliano who routinely makes drug arrests, "may set (some of the drugs) aside, from time to time, for his informants."

Siciliano left the court after his testimony and was unavailable to respond to the lawyer's comments.

Almonte remains held in jail following his acquittal because he still faces a pending drug case involving more serious trafficking charges in Worcester Superior Court.

Police in Fitchburg referred to Almonte as a major drug trafficker when they arrested him again in December with what they said were large amounts of cocaine and heroin.

Bosk who said Almonte testified in Spanish, had "reasonable fear" to evade police in August because the detectives were not dressed in their uniforms.

"They were big guys. They all had guns. They were in plainclothes," Bosk said.

Mullaney said police had badges on and all the evidence pointed to Almonte having the illicit drugs on him.

"If you believe that (police) planted evidence on Mr. Almonte, then you find him not guilty," Mullaney said.

The jury took less than an hour to arrive at their decision to exonerate Almonte.

CONCLUSION

Due to the blatant perjury to a jury by Detective Siciliano, there is grave doubt as to the reliability of any of his inputs in the affidavit that he created for the search warrant. There were and are major issues with the affidavit. The Sadlowskis would like to depose the informant, referred to as Confidential Reliable Informant, who was not named, that Detective Siciliano supposedly used as the critical component to justify his affidavit for the application of search warrant for the Sadlowski residence.

The United States Court of Appeals for the First Circuit was wrong to twist around words from Sadlowskis' opposition and use the twisted words to dismiss Sadlowskis' complaint of Fourth Amendment violations.

In the deposition of Detective Benoit, he was unable to identify any other police officer who could verify the actual search warrant that he had shown at the Sadlowski residence.

The Sadlowskis move the Honorable Court to grant their Petition for Certiorari so that the dismissal by the U.S. Court of Appeals for the First Circuit is reversed.

CERTIFICATE

This certificate is that the grounds identified in the petition for rehearing are in good faith and without delay. Intervening grounds and other substantial grounds not previously presented are in this petition for rehearing.

Respectfully submitted,

Michael Sadlowski

Michael Sadlowski

Jocelyn Sadlowski

Jocelyn Sadlowski